

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANDREW V. DAVIS,

Defendant.

NO. CR-11-025-JLQ

**MEMORANDUM OPINION AND
ORDER GRANTING MOTION TO
SUPPRESS**

I. Introduction

Based upon evidence found during a search of his personal computer at his home pursuant to a state court search warrant, Defendant Andrew Vaughn Davis ("Davis") is charged with possession and receipt of child pornography in violation of 18 U.S.C. § 2252A, the receipt charge carrying, according to the Government's penalty slip (ECF No. 3), a mandatory minimum sentence of imprisonment of not less than fifteen years. There is no charge or contention that the Defendant played any role in the production of the child pornography.

Before the court is Defendant's Motion to Suppress Evidence (ECF No. 30) wherein he claims that the search warrant used to seize the evidence in this case was obtained in violation of the Fourth Amendment of the United States Constitution in that the applying officer deliberately or recklessly failed to disclose to the issuing state Superior Court judge that the minor, referred to as G.T., who had allegedly had sexual contact with the Defendant six months previously, had, *inter alia*, recently provided false information to law enforcement officers, including to the affiant herein and made a false claim to the officers of an alleged sexual assault by a fellow student. It is undisputed that this information concerning the credibility, or lack thereof, of G.T. was not disclosed to the state court judge who issued the search warrant for the Defendant's computer.

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2 The Government argues that it was unnecessary to provide the issuing judge with
3 the information concerning the prior false sexual assault accusations by the minor and
4 that even if the warrant affidavit was supplemented with the omitted information, there
5 would still be sufficient evidence to support probable cause.

6 Defendant requested a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154
7 (1978), and an evidentiary hearing was held before the undersigned on Defendant's
8 Motion to Suppress Evidence on April 21, 2011. Defendant Andrew Vaughn Davis was
9 present and represented by Aaron Rasmussen, Esq. Assistant United States Attorney
10 Stephanie Lister appeared on behalf of the Government. At the conclusion of the
11 evidentiary hearing, the court requested supplemental briefing, which has now been
12 provided. (ECF No. 42 & 43). This opinion and order is intended to memorialize and
13 supplement the oral rulings of the court.

14 **II. Findings of Fact**

15 The search warrant for the Defendant's personal computer was issued by Stevens
16 County Superior Court Judge Allen C. Nielsen on November 18, 2008. (ECF No. 32, Ex.
17 A). The officer offering the affidavit in support of the warrant was Stevens County
18 Deputy Sheriff Iain Ashley. Officer Ashley began his law enforcement career as a patrol
19 deputy sheriff in 2002, and became a detective in November of 2007. The affidavit of
20 Deputy Ashley contained information incorporated in a City of Spokane police report
21 stating that a female minor, who was 15 years old at the time, had claimed that she had
22 consensual sexual intercourse with the Defendant Davis some six months prior to the
23 report. The minor is hereinafter referred to as "GT".

24 Deputy Ashley did not interview the minor herself, but relied upon the police
25 report of Officer Eckersley of the City of Spokane Police Department. GT had provided
26 the claimed sexual contact information to Officer Eckersley who then prepared a report
27 that was forwarded to Detective Ashley. GT had also provided Eckersley with some
28 Myspace chat logs, portions of which were contained in the Ashley affidavit, which the
Government argues were consistent with the sexual contact allegations. Those logs are

1 discussed *infra*. There was nothing in the chat logs that referred to pornography of any
2 kind. In addition to the information provided by GT to Officer Eckersley the only other
3 information contained in the affidavit was that Davis had two prior convictions: 1) 3rd
4 Degree Rape (1998) and 2) 3rd Degree Rape of a Child (1998).

5 Deputy Ashley had previous law enforcement contact with GT, none of which was
6 revealed to the state court judge in the affidavit. Ashley's first interaction with GT
7 occurred when she was 13 years old (which would have been approximately 2006, as she
8 was 15 years old in 2008). Ashley was at the time a patrol deputy and responded to a
9 call at the residence. Ashley testified: "A child had called. I believe it was her [GT] had
10 called about being disciplined by a parent for I believe it was something to do with using
11 the computer." The result of the investigation was that the allegations were determined
12 to be "unfounded." Ashley determined it was a reasonable discipline issue, and there
13 was no basis for criminal charges.

14 Deputy Ashley's next interaction with GT was on March 4, 2008. At this time GT
15 had made an allegation of a sexual assault of her by a 15 year-old boy at the school
16 (Cody Little who testified during the *Franks* hearing). GT claimed that Cody had pinned
17 her to the wall in the school hallway, kissed her, tried to stick his hands down her pants,
18 and threatened her not to tell anyone. GT's description was very detailed, including that
19 her hands were pinned against the wall over her head, that Cody tried to stick his hands
20 down her pants and struggled with her belt, that his hand made it down about 4-inches to
21 skin on skin contact, but not all the way to the pubic region. GT recounted that Cody
22 kissed her, punched her in the stomach, she kneed or kicked him, and that the entire
23 episode lasted about 10 minutes. Deputy Ashley's report from March 4, 2008, also
24 recounted a conversation he had with GT's mother: "She also told me that she had been
25 having trouble at home with GT and brought up a past call our office had handled at the
26 house in which GT reported an assault that was unfounded. She also advised that GT
27 had described a similar event to the one I was investigating but stated that it had
28 allegedly occurred when GT was 13 years old." (ECF No. 32 Ex. C).

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2 On March 6, 2008, GT recanted her allegations against Cody. She executed a
3 voluntary statement which indicated she was "very annoyed" with Cody because he had
4 previously asked her to have sex so she "told Mr. St. Clair [the principal] a different
5 story. He [Cody] didn't try to stick his hands down my pants or anything except for
6 asking to have sex again." (ECF No. 32, Ex. D). Deputy Ashley was aware that GT had
7 recanted her allegations against Cody and that the allegations were false. Detective
8 Ashley informed Cody and his mother that GT had recanted the allegations and that GT
9 had "confessed to making up the entire story." (ECF No. No. 32, Ex. E). Deputy Ashley
10 prepared a report dated March 6, 2008, which stated: "I picked up a voluntary statement
11 from [GT]. In it she states that there was no assault and that her and C. Little only spoke
12 while in the hallway." (Govt's Ex. 2 from Evidentiary Hearing). Ashley also discussed
13 with Cody's mother that GT was in foster care and some discussion was had concerning
14 mental health counseling. According to Cody's mother, Lori Little, Deputy Ashley told
15 her GT's story was made up, that it was not the first time GT had done this sort of thing,
16 and that GT had mental and emotional problems. (ECF No. 32 Ex. E). Ms. Little told
17 Ashley that she wanted charges brought against GT for the false accusations, but Ashley
18 advised against such action. None of this critical and highly relevant credibility
19 information of prior false sexual assault allegations by GT, which was within Deputy
20 Ashley's knowledge, was disclosed by Ashley to the judge who he was asking to issue a
21 search warrant for Davis's personal computer.

22 The affidavit to obtain the computer search warrant contains no information about
23 Detective Ashley's prior interactions with GT or her prior false statements. As pointed
24 out in cross-examination, either GT's initial report to police of the February 28, 2008
25 Cody sexual assault incident was false, or the voluntary statement recanting her initial
26 report contained false statements. Additionally, Ashley knew that two years prior GT
27 had made a call to police which turned out to be "unfounded." Since the basis of Deputy
28 Ashley's application for a search warrant for the Defendant Davis's computer was the
alleged statements of GT, her credibility, or the lack thereof, was of critical import in an

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2 evaluation by a judge concerning whether probable cause existed for the issuance of a
3 search warrant for the Defendant's computer.

4 The Ashley affidavit recounts GT's report to Officer Eckersley. In brief, it states
5 that in a November 2008 interview with Officer Eckersley, GT stated that sometime
6 between May 15, 2008 and May 20, 2008, she was at Davis' house with Davis's daughter
7 (who is approximately GT's age) and another minor male. She alleged that Davis
8 provided alcohol, and she and Davis had sex. The affidavit states that "she never asked
9 him to stop," and that she "was not threatened or forced," but regardless, Davis' actions,
10 if true, would have been criminal, given GT's age.

11 Officer Eckersley's Spokane police report is more detailed than what was
12 presented in the search warrant affidavit, but Deputy Ashley was in possession of that
13 report. The report includes that GT had been living with her sister since the time that GT
14 was arrested for assaulting her mother. (ECF No. 38-1). GT's sister told GT that Davis
15 was a registered sex offender on the same day (in November 2008), and just prior to GT
16 reporting she had allegedly had sex with Davis. GT reported that they had sex
17 "sometime in late May to early June." She told Eckersley that she was making out with
18 Davis on a porch swing, and then they moved to the ground and had sex. She described
19 it as "consensual."

20 Despite knowing of GT's credibility issues including her history of a prior false
21 report of a sexual assault¹, Ashley did not present this information to the Superior Court
22 judge, nor did Ashley take steps to corroborate GT's story. Detective Ashley did not
23 contact Eckersley to discuss his report, or to inform Eckersley of his knowledge of GT's
24 prior allegations. Ashley looked up Davis' criminal history and called GT's mother. He
25 did not personally interview GT. Other than these steps, he frankly admitted during his

26 ¹Ashley also did not advise the Superior Court judge of the
27 prior "unfounded" allegation by GT against her father, or that
28 she had been arrested for assaulting her mother. Ashley had
knowledge of these events either personally or from the
Eckersley report.

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2 *Franks* hearing testimony, that he conducted no other investigation prior to requesting
3 the warrant. He did not contact the counselor who GT allegedly first reported to that she
4 had sex with Davis. He also did not contact the other individuals who were allegedly at
5 the house on the night that Davis and GT had sex.

6 Deputy Ashley testified that the only search warrant training he had prior to
7 November 2008 was in the police academy in 2001. He then received some on-the-job
8 training when he became a detective, but did not categorize this as "formal" training. At
9 the time he applied for the search warrant at issue in this case, he had only prepared
10 approximately five search warrant affidavits.

11 The court finds that GT's prior false statements of sexual assault against Cody
12 Little, of which Deputy Ashley was aware, were material and were improperly omitted
13 from his affidavit. The court finds that this information was deliberately omitted,
14 although the deliberate omission may have been by reason of insufficient training. A
15 failure to adequately train detectives concerning Fourth Amendment obligations is
16 reckless. A failure to train does not excuse a Constitutional violation. See *United States*
17 *v. Simmons*, 2011 WL 1045527 (N.D. Ill. March 22, 2011) ("Any failure to train Officer
18 Murphy on these matters is unfortunate and does not excuse the recklessly misleading
19 application for search warrant that was undertaken in this case."). The court finds
20 Deputy Ashley's proffered reasons for not including GT's prior false sexual claims and
21 for not conducting an adequate investigation to corroborate GT's statements to be
22 inadequate and without factual or legal support. The court does not find credible
23 Detective Ashley's initial statement on cross-examination that at the time he submitted
24 the warrant affidavit he had "no concerns" about GT's reliability. He later stated during
25 cross-examination that at the time of his affidavit he knew that GT had previously
26 submitted a false statement to police, that during the March 2008 "Cody" sexual assault
27 investigation he had concerns about GT's reliability and concerns about her credibility.
28 None of this was disclosed to the judge who was to make the determination as to whether
a search warrant should issue.

III. Legal Conclusions

The Fourth Amendment commands that, "[N]o Warrants shall issue, but upon probable cause, supported by Oath or affirmation." If the affiant is relying on an informant, the affidavit must recite "some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed...was 'credible' or his information reliable." *Franks v. Delaware*, 438 U.S. 154, 165 (1978). "[I]t would be an unthinkable imposition upon his [the issuing judge's] authority if a warrant affidavit, revealed after the fact to contain a deliberately or reckless false statement, were to stand beyond impeachment." *Id.* Thus, the Supreme Court recognized that a warrant could be challenged if based on deliberately or recklessly false statements.

The Ninth Circuit has expressly extended the *Franks* requirement to omissions. See *United States v. Stanert*, 762 F.2d 775, 781 (9th Cir. 1985) ("we expressly hold that the Fourth Amendment mandates that a defendant be permitted to challenge a warrant affidavit valid on its face when it contains deliberate or reckless omissions of facts that tend to mislead."). If a court determines that a warrant is based on false statements or reckless omissions, the affidavit must be "purged of those falsities and supplemented by the omissions." *United States v. Stanert*, 762 F.2d 775, 782 (9th Cir.1985). The Ninth Circuit stated: "We must determine, therefore, whether the affidavit, once corrected and supplemented, would provide a magistrate with a substantial basis for concluding that probable cause existed." *Id.*

The Ninth Circuit has also indicated in *United States v. Hall*, 113 F.3d 157 (9th Cir. 1997), that sufficient credibility problems with an informant may justify disregarding entirely the informant's statement. The *Hall* court states:

If the defendant establishes perjury or reckless disregard of the concealment of material information by a preponderance of evidence, and with the concealed material provided, the resulting evidence is insufficient to establish probable cause, then the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause were lacking.

Id. at 159 citing *Franks*. In *Hall*, the warrant was based on the testimony of an informant named Dang, and law enforcement failed to disclose Dang's prior convictions to the

1 Magistrate, including a prior conviction for falsely reporting a crime. The Ninth Circuit
2 stated: "If Dang was not worthy of belief, then this would not amount to probable cause."
3 *Id.* at 159. As the determination of probable cause is a totality of the circumstances
4 determination, the better approach appears to be to consider whether Deputy Ashley's
5 warrant affidavit, as presented to Superior Court Judge Nielsen, and supplemented with
6 the omitted information concerning GT's prior false sexual assault allegation and lack of
7 credibility history, made a sufficient showing of probable cause.

8 The court has determined that Detective Ashley committed a reckless or deliberate
9 omission by failing to disclose GT's history of prior false statements. The *quaere* then is
10 whether probable cause existed, under a totality of the circumstances evaluation, when
11 considering GT's reliability and credibility problems.

12 **A. Probable Cause**

13 The probable cause standard "protects citizens from rash and unreasonable
14 interferences with privacy and from unfounded charges of crime, while giving fair
15 leeway for enforcing the law in the community's protection." *Maryland v. Pringle*, 540
16 U.S. 366, 370 (2003). Probable cause is a "fluid concept-turning on the assessment of
17 probabilities in particular factual contexts-not readily, or even usefully, reduced to a neat
18 set of legal rules." *Id.* at 371. It is a concept "incapable of precise definition" which
19 depends on the "totality of the circumstances." *Id.* "The substance of all the definitions
20 of probable cause is a reasonable ground for belief of guilt." *Id.*

21 Here, Deputy Ashley's affidavit had essentially three components: 1) the
22 statements provided by GT to Officer Eckersley as recorded in his report and forwarded
23 to Deputy Ashley; 2) the Myspace chat logs; and 3) Davis' criminal history. If the
24 Superior Court judge had been informed that GT had recently made a false allegation of
25 sexual assault and had previously made an "unfounded" allegation against her father
26 concerning parental discipline, the judge would have likely afforded her statement little
27 weight. The Myspace chat logs were provided by GT, and thus the veracity of those chat
28 logs, their meaning, and weight without GT's attribution, would also be reasonably

1 questioned.

2 The first Myspace chat log is allegedly from May 20, 2008, with the name of the
3 alleged speaker having been provided by GT. As so identified by GT the log would
4 read:

5 Andrew Davis: ok. hey delete this after a few ok, but you know how (juveniles
6 name removed) likely told you everything her an M. did, did u do the same to her? :) just
7 got to know so I know to forget it happened for life or prepare something nice to say to
8 my princess????? Sorry to mention it I know you don't want me to.

9 GT: Nope I didn't

10 Andrew Davis: k, k, um just wanted to do what u did so im glad i know now k, im
11 sure its hard for you and all

12 (Affidavit for Search Warrant, ECF No. 32, Ex. A). The statement is ambiguous. It does
13 not contain any explicit references to sex, or contain any inappropriate language.

14 Following the excerpt from the chat log, the affidavit states: "According to Officer
15 Eckersley's report GT told him that the conversation above is in reference to her and
16 Andrew Davis having sex." (ECF No. 32 Ex. A p. 4) Thus, with GT's credibility and
17 reliability in question, the ambiguous statement bears even less weight.

18 The second Myspace chat of May 21, 2008, is more concerning, and could be
19 interpreted to contain sexual innuendo. With GT's identification of the speakers, it
20 reads:

21 Andrew Davis: I love having you around here, C. loves you too!!

22 GT: Of course C. likes having me around. I spend so much time with my 4 year
23 old and 5 year old nieces that little kids are just easy towards me

24 Andrew Davis: and apparently so are older guys

25 GT: Oh my gawd

26 Andrew Davis: don't worry im sure they cant help it sine you are so fuckin hott
27 and tempting

28 GT: And we move on to a new subject

1 (Affidavit for Search Warrant, ECF No. 32, Ex. A). There again is no specific reference
2 to sexual relations. Davis allegedly wrote, "you are so fucking hott and tempting."
3 Although it is clearly inappropriate and distasteful for an adult male to make such a
4 comment to a 15-year old girl, such comment does not constitute reasonable ground for
5 belief that rape of a child 3rd degree had been committed, nor is such a comment
6 concerning child pornography.

7 The affidavit also recounts that Detective Ashley contacted GT's mother, prior to
8 applying for the warrant. Ashley states: "She advised me that she was aware of the
9 incident and she had suspected 'something' had taken place between GT and Andrew
10 Davis." Ashley testified that he "didn't disclose with her you know specifics of the
11 case," and that she "basically told me she had suspected something." Suspecting a vague
12 'something', falls far short of establishing probable cause.

13 Lastly, this brings the court to Davis' past criminal history. He had two prior
14 convictions from ten years prior. A court may certainly consider criminal history in
15 determining probable cause, but "criminal history alone cannot establish reasonable
16 suspicion or probable cause." *Burrell v. McIlroy*, 464 F.3d 853, 858 n. 3 (9th Cir. 2006).
17 The affidavit stated that his prior convictions were for Rape 3rd degree and Rape of a
18 child 3rd degree. Here he was under suspicion of having committed Rape of a child 3rd
19 degree, and therefore the prior criminal history was probative. However, as stated above,
20 that history alone would not support a finding of probable cause. Additionally, the
21 convictions were 10 years old at the time of the warrant application. Now Justice
22 Sotomayor, when writing for the Second Circuit, stated that an 18-year old conviction
23 for sexual abuse of a minor cited in a warrant application in a child pornography
24 prosecution "should have been only marginally relevant because the conviction was
25 stale." *United States v. Falso*, 544 F.3d 110, 122 (2nd Cir. 2008).

26 Everything in the Ashley affidavit, except for the criminal history, is tainted by the
27 deliberate or reckless omission of GT's prior credibility problems. It appears that this
28 could justify disregarding all the information provided by GT. See *United States v. Viers*,

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251 Fed.Appx. 381 (9th Cir. 2007) ("Deleting anything in the affidavit that, on the
2 record and findings, might be tainted by deliberate or reckless misstatement or omission,
3 the district court was left with the following...."); see also *United States v. Reeves*, 210
4 F.3d 1041, 1044 (9th Cir. 2000) ("If an informant's history of criminal acts involving
5 dishonesty renders his/her statements unworthy of belief, probable cause must be
6 analyzed without those statements."). In *Viers*, the court found that after deleting such
7 information, there were still four pieces of information that supported probable cause. In
8 this case, there are at most two non-GT furnished items: 1) criminal history and 2) GT's
9 mother's statement that she believed 'something' had happened between GT and Davis.
10 Like in *Hall*, there is a lack of non-GT furnished information. In *Hall* the court stated:
11 "there was virtually no evidence at all without the informant's testimony. Without
12 relying on what [the informant] said, all the magistrate knew about Hall was that he had
13 been seen driving into a trailer court parking space in a red and white pickup truck." 113
14 F.3d at 160. Here, it was the unreliable GT who provided the Myspace chat records and
15 described who the speakers were and what they were allegedly about. It was also GT's
16 representation that the chat logs were between her and Davis. Even assuming they were
17 written by Davis, without giving weight to GT's interpretation of the chats, they are
18 vague, open to interpretation, and contain only one clearly inappropriate statement.
19 Even the most inappropriate statement is open to interpretation. It appears to say that GT
20 is "easy" to "older guys" because she is "so fuckin hott and tempting." It does not
21 reference a sex act occurring between GT and Davis.

22 Given Deputy Ashley's undisclosed knowledge of GT's prior false allegations,
23 obtaining corroborating information was of heightened importance. However, Ashley
24 conducted virtually no independent investigation. He did not speak to GT prior to
25 seeking the warrant. He did not speak to Officer Eckersley, or to GT's counselor (to
26 whom GT first reported having sex with Davis), nor did he interview the other
27 individuals present at the house on the night GT and Davis allegedly had sex.

28 Judges depend on law enforcement to provide truthful information about a

1 complaining witness's credibility. *United States v. Hall*, 113 F.3d 157, 160 (9th Cir.
2 1997) ("The state magistrate depended on the prosecutor and the trooper to present him
3 with the truth, and to bring to his attention problems with their informant's credibility.").
4 In this case, Detective Ashley did not provide the state court judge with any of the
5 information he knew regarding GT's prior false allegations of sexual assault against
6 Cody, her prior "unfounded" complaint to police regarding her father, or that she has
7 been arrested for assaulting her mother. In fact, there is a sub-section heading in the
8 affidavit entitled, "Informants and Basis of Reliability," (ECF No. 32 Ex. A p. 2). That
9 sub-section is entirely blank, no information is provided. Detective Ashley testified that
10 he did not provide any additional information when he appeared before Judge Nielsen.

11 **IV. Conclusion**

12 The protections of the Fourth Amendment are not lessened based on the nature of
13 the crime investigated. *United States v. Gourde*, 440 F.3d 1065, 1075 (9th Cir. 2006)
14 ("Given the current environment of increasing government surveillance and the long
15 memories of computers, we must not let the nature of the alleged crime, child
16 pornography, skew our analysis or make us "lax" in our duty to guard the privacy
17 protected by the Fourth Amendment.") see also *United States v. Krupa*, 633 F.3d 1148
18 (9th Cir. February 11, 2011) (Berzon, J. *dissenting*) ("I cannot help but think that had
19 this case involved anything but child pornography, it would come out differently. I fear
20 that understandable abhorrence of this particular crime can infect judicial judgment. We
21 would do well to remember that the protections of the Fourth Amendment do not depend
22 on the nature of the suspected criminal activity.").

23 As stated by now Justice Sotomayor, courts are not insensitive to the need for law
24 enforcement to have a certain amount of flexibility in conducting criminal investigations,
25 however, requiring a sufficient showing of probable cause "will simply focus law
26 enforcement efforts on those who can reasonably be suspected of possessing child
27 pornography. If this proves to be a hindrance, it is one the Fourth Amendment
28 demands." *United States v. Falso*, 544 F.3d 110, 124 (2nd Cir. 2008) (internal citations

1 and quotations omitted).

2 When considering the serious credibility concerns surrounding GT, which were
3 deliberately or recklessly omitted by Detective Ashley, the court finds the information
4 contained in the affidavit was insufficient to establish probable cause. The court finds
5 that had the issuing state court judge been truthfully provided with the omitted
6 information about GT, the judge would not have issued the warrant without requiring
7 Detective Ashley to conduct further investigation and obtain corroborating information.
8 Accordingly, the Motion to Suppress (ECF No. 30) must be, and is, **GRANTED**.

9 The court does not reach this conclusion lightly, nor does this decision minimize
10 the very serious nature of the allegations against Davis. However, the Fourth
11 Amendment commands that warrants be issued only "upon probable cause" and
12 supported by truthful information ("supported by Oath or affirmation"), and the warrant
13 in this case was not. The Ninth Circuit has stated: "In the absence of countervailing
14 evidence to bolster the informant's credibility or the reliability of the tip, an informant's
15 criminal past involving dishonesty is fatal to the reliability of the informant's
16 information, and his/her testimony cannot support probable cause." *United States v.*
17 *Reeves*, 210 F.3d 1041, 1045 (9th Cir. 2000)(emphasis added). Although GT did not
18 have a criminal conviction for a crime of dishonesty, it is clear that she had made false
19 statements to the police regarding the alleged sexual assault by Cody Little, and two
20 years prior had made an "unfounded" allegation against her father. Detective Ashley
21 conducted virtually no investigation to corroborate the statements of GT, and thus
22 presented no countervailing evidence to bolster GT's credibility or reliability. A judge
23 reviewing all of these circumstances with knowledge of the serious credibility issues of
24 GT, GT's mother's vague suspicion that "something" had occurred, the GT identified
25 Myspace chats, and Davis' dated criminal history would have had such serious questions
26 as to the existence of probable cause that he would have found no substantial basis for
27 concluding probable cause existed and would have required further investigation and
28 inquiry prior to the issuance of a search warrant for the Defendant's personal computer.

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2 The Supreme Court has stated that "the exclusionary rule's prime purpose is to
3 deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth
4 Amendment against unreasonable searches and seizures." *United States v. Crews*, 502
5 F.3d 1130, 1136 n.4 (9th Cir. 2007) *Id. citing* *United States v. Calandra*, 414 U.S. 338
6 (1974). "Search and seizure laws are designed to punish police for improperly
7 compromising defendants' rights for the sake of investigatory economy." *Id.* The events
8 of this case and the court's decision are not the result of any punishment motivation.
9 However, deterrent and education of the agency and officer involved is a hoped for
10 result. The exclusionary rule also serves the "imperative of judicial integrity." *Elkins v.*
11 *United States*, 364 U.S. 206, 223 (1960). The federal courts cannot be "accomplices in
12 the willful disobedience of a Constitution they are sworn to up-hold." *Id.* For all the
aforesaid reasons:

13 **IT IS HEREBY ORDERED:**

- 14 1. Defendant's Motion to Suppress (ECF No. 30) is **GRANTED**.
15 2. The court **declares excludable** from Speedy Trial Act calculations the
16 following period: Pursuant to 18 U.S.C. § 3161(h)(1)(D), the period from April 8, 2011, the
17 date the Defendant filed the Motion to Suppress, through the date of this Order.

18 **IT IS SO ORDERED.** The District Court Executive is directed to enter this Order
19 and to provide copies to counsel.

20 **DATED** this 27th day of May, 2011.

21 s/ Justin L. Quackenbush
22 JUSTIN L. QUACKENBUSH
23 SENIOR UNITED STATES DISTRICT JUDGE
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